

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAUAI ISLAND UTILITY COOPERATIVE)
For Approval of Power Purchase)
Contract for As-Available Energy)
And Interconnection Agreement with)
Green Energy Hydro, LLC and to)
Include costs in its Energy Rate)
Adjustment Clause.)
_____)

DOCKET NO. 2007-0059

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

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FILED

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In the Matter of the Application of)
KAUAI ISLAND UTILITY COOPERATIVE)
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Contract for As-Available Energy)
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Include costs in its Energy Rate)
Adjustment Clause.)
_____)

Docket No. 2007-0059

DECISION AND ORDER

By this Decision and Order, the commission approves the Revised Purchase Power Contract ("Revised PPC") dated August 27, 2008 between Green Energy Hydro, LLC ("Green Energy") and KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"),¹ and authorizes KIUC to include the purchased energy charges (and related revenue taxes) that KIUC incurs under the Revised PPC in KIUC's Energy Rate Adjustment Clause ("ERAC") for the term of the Revised PPC, as further described herein.

¹The Parties are KIUC and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). Green Energy Hydro, LLC is not a party to this proceeding. KIUC and Green Energy Hydro, LLC are referred to as the "Contracting Parties."

I.

Background

A.

KIUC and Green Energy

KIUC is a Hawaii not-for-profit electric cooperative engaged in the production, transmission, distribution, purchase, and sale of electric energy on the island of Kauai.²

Green Energy is a Hawaii limited liability company primarily formed for the purpose of constructing and operating a hydroelectric generation plant ("Facility") on the island of Kauai.³ Fifty percent of Green Energy's membership interest is owned by Green Energy Kauai, LLC and fifty percent by Hawaiian Mahogany, Inc.⁴

²Application; Attachments A through C; Verification; and Certificate of Service, filed on March 6, 2007; supplemented on March 30, April 10, and June 5, 2007 (pages filed under confidential seal) (collectively, "Application"), at 3. KIUC has been an operating public utility since November 1, 2002, when it purchased substantially all of the assets and assumed the operations of the Kauai Electric Division of Citizens Communications Company. See In re Citizens Comm. Co., Docket No. 02-0060, Decision and Order No. 19658, filed on September 17, 2002, as amended by Decision and Order No. 19755, filed on October 30, 2002.

³Application, at 4.

⁴Application, at 4.

B.

Application

On January 12, 2007, KIUC and Green Energy entered into a Power Purchase Contract for As-Available Energy ("Original PPC") for the purchase by KIUC of as-available energy from a hydroelectric generation plant to be constructed, owned, operated and maintained by Green Energy on lands owned by Eric A. Knudsen, on a parcel (TMK No. 2-7-002-001) located near Knudsen Gap on the island of Kauai. KIUC filed an Application requesting that the commission: (1) approve the Original PPC; (2) approve the related Interconnection Agreement dated December 18, 2006; (3) find that the energy payments are reasonable; (4) find that the terms and conditions under the Original PPC, pursuant to which KIUC shall purchase renewable energy from Green Energy, are prudent and in the public interest; and (5) approve the inclusion of the purchased energy payments and related revenue taxes that are incurred by KIUC under the Original PPC, in KIUC's ERAC, for the term of the Original PPC pursuant to HAR § 6-60-6(2); (6) waive paragraph III.D.5 of the Integrated Resource Planning ("IRP") Framework, to the extent necessary and applicable; and (7) grant other relief as may be just and reasonable.⁵

By Decision and Order No. 24177, filed on May 6, 2008 ("Decision and Order No. 24177"), the commission denied the Application without prejudice upon determining that the price KIUC agreed to pay was not de-linked from the price of fossil fuel as required by HRS § 269-27.2.

⁵Application, at 1-2.

C.

Amended Application

On August 29, 2008, KIUC filed an Amended Application⁶ in which it states that based on the commission's Decision and Order No. 24177, it provided Green Energy with formal notice of its termination of the Original PPC pursuant to Section 6 (Conditions Precedent), subsection (d), as amended by letter dated January 9, 2008.⁷ KIUC and Green Energy then engaged in discussions and negotiations for a new energy payment rate and signed the Revised PPC.⁸

KIUC states that the Contracting Parties have:

[A]ddressed the reason for the [c]ommission's denial of the Original PPC, by both (1) tying future adjustments specifically to a consumer price index as allowed by HRS § 269-27.2, and (2) placing a ceiling tied to KIUC's avoided cost calculation as reflected in its Schedule "Q" modified payment tariffed rate at that time.

Amended Application, at 5-6 (citing Appendix B, section 2).

In its Amended Application, KIUC requests that the commission: (1) approve the Revised PPC pursuant to HRS § 269-27.2; (2) approve the related Interconnection Agreement, dated December 18, 2006, between the Contracting Parties; (3) find that the purchased energy charges to be paid by KIUC pursuant to the Revised PPC are reasonable; (4) find that the purchased power arrangements under the Revised PPC are prudent

⁶Amended Application; Attachments 1 through 4; Verification; and Certificate of Service, filed on August 29, 2008 (collectively, "Amended Application").

⁷Amended Application, at 4.

⁸Amended Application, at 4.

and in the public interest; (5) authorize, pursuant to HAR § 6-60-6(2), the inclusion of the purchased energy charges (and related revenue taxes) to be incurred by KIUC in KIUC's ERAC; (6) grant a waiver of Paragraph III.D.5 of the IRP Framework; and (7) grant other relief as may be just and reasonable.⁹

1.

Terms of the Revised PPC

Under the terms of the Revised PPC:

A. The Revised PPC shall commence upon the In-Service Date¹⁰ and shall remain in effect for an initial term of twenty years.¹¹ The Revised PPC shall continue until terminated by either party at any time after the initial term, and not less than 180 days' advance written notice to the other party.¹²

B. KIUC will accept and pay for all the net energy generated by the Facility and delivered by Green Energy to KIUC; provided that the instantaneous megawatt output shall not exceed

⁹Amended Application, at 1-2.

¹⁰"In-Service Date" is the date that the Facility has successfully met all of the requirements of the Interconnection Agreement. Amended Application, Attachment 1, at D-3.

¹¹Amended Application, Attachment 1, at 5.

¹²Amended Application, Attachment 1, at 5.

the Allowed Net Capacity¹³ at any given time, and KIUC shall not be obligated to pay for energy in excess of such amount.¹⁴

C. The Energy Rate for the delivery of energy for sale to KIUC is described in Appendix B of the Revised PPC, as follows:

The energy rate for the delivery of energy for sale to [KIUC] shall be at the rate of \$200 per MWh for calendar year 2008 (which represents [KIUC's] Schedule "Q" modified payment tariffed rate as of January 1, 2008). Beginning in 2009, the energy rate shall be adjusted on an annual basis beginning on the February invoice for that year to reflect the percentage change in the "Consumers' Price Index for All Urban Consumers, Honolulu, Hawaii, ALL ITEMS" ("Honolulu CPI") between January 1 of that year and January 1 of the immediately preceding year . . . Further notwithstanding the above and anything in this [Revised PPC] to the contrary, in the event that the energy rate described above exceeds [KIUC's] Schedule "Q" modified payment tariffed rate as reported in the [ERAC] (or equivalent) filed with the [commission] and in effect at that time, then the energy rate in effect for the then applicable current billing period shall be equal to [KIUC's] Schedule "Q" modified payment tariffed rate in effect at that time.

Amended Application, Attachment 1, at B-1 to B-2.

D. Green Energy shall obtain all permits and licenses required for the construction and operation of the Facility, including but not limited to rights-of-way, easements or leases.¹⁵ Green Energy shall install, operate and maintain the Facility in

¹³"Allowed Net Capacity" shall be the lower of (i) 130 [kilowatt ("kW")], or (ii) the net nameplate capacity (net for export) of Green Energy's Facility that are installed and have successfully completed the Control System Acceptance Test by the In-Service Date. Amended Application, Attachment 1, at A-2.

¹⁴Amended Application, Attachment 1, at B-1 to B-2.

¹⁵Amended Application, Attachment 1, at 4.

compliance with all applicable laws and regulations.¹⁶ Green Energy shall provide KIUC access to occupy designated space, operate, maintain, modify, and remove interconnection facilities as needed.¹⁷

E. Green Energy shall provide KIUC with certification as a qualifying facility ("QF") on or before the In-Service Date and thereafter as requested or KIUC shall not be obligated to accept or pay for any energy delivered by Green Energy and the Revised PPC may be terminated as set forth in the Revised PPC's Appendix C.¹⁸

F. The Facility shall maintain a continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading and 0.95 lagging.¹⁹ If KIUC requests or requires the Facility to accept or provide reactive power outside the range specified, one-half of one percent shall be added to the meter [kilowatt hour ("kWh")] during the period the Facility is outside the range specified.²⁰

G. Green Energy shall release, indemnify, and hold harmless KIUC, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees resulting from, or arising out of the energy generated under the Revised

¹⁶Amended Application, Attachment 1, at 4.

¹⁷Amended Application, Attachment 1, at 4-5.

¹⁸Amended Application, Attachment 1, at 11.

¹⁹Amended Application, Attachment 1, at B-2.

²⁰Amended Application, Attachment 1, at B-2.

PPC, the operation and maintenance of the Facility or Green Energy's actions or inactions with respect to the Revised PPC.²¹ Green Energy shall, at its own expense, maintain certain types and amounts of insurance as described in the Revised PPC.²²

H. The terms and conditions under which Green Energy's Facility will interconnect to KIUC's system will be governed by the Interconnection Agreement, dated December 18, 2006 and attached to the Amended Application as Attachment 2.²³

I. The Contracting Parties agreed to a number of conditions in the Revised PPC, among other things, for KIUC to exercise its right to seek certain approvals or else waive certain rights to terminate the Revised PPC.²⁴ In addition, the Revised PPC may be terminated if, among other things, it is not approved (including by the commission) within twelve months of the execution of the Revised PPC.²⁵

2.

Terms of the Interconnection Agreement

The December 18, 2006 Interconnection Agreement sets forth the terms and conditions under which Green Energy's Facility will interconnect with, and operate in parallel with,

²¹Amended Application, Attachment 1, at 7.

²²Amended Application, Attachment 1, at 8-9.

²³Amended Application, Attachment 2.

²⁴Amended Application, Attachment 1, at 7.

²⁵Amended Application, Attachment 1, at 6.

KIUC's system, consistent with the Revised PPC. Attachment 3 of the Interconnection Agreement consists of a schematic diagram that depicts Green Energy's Facility, the Interconnection Facilities, and the Point of Interconnection with KIUC's system.²⁶

The responsibilities of the Contracting Parties include:

- 1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
- 1.5.2 [Green Energy] shall construct, interconnect, operate and maintain its Small Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, Good Utility Practice, and any other requirements imposed by [KIUC].
- 1.5.3 [KIUC] shall construct, operate, and maintain its Transmission and Distribution System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.²⁷

²⁶Interconnection Facilities - [KIUC's] Interconnection Facilities and [Green Energy's] Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to [KIUC's] Transmission and/or Distribution System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

.

Point of Interconnection - the point where the Interconnection Facilities connect with [KIUC's] Transmission and/or Distribution System. Amended Application, Attachment 2, at Attachment 1.

²⁷Good Utility Practice - Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable

- 1.5.4 [Green Energy] agrees to construct and operate its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements and other applicable national and state codes and standards. [Green Energy] agrees to design, install, maintain, and operate its Small Generating Facility so as to minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of [KIUC].
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. [KIUC] and [Green Energy], as appropriate, shall provide Interconnection Facilities that adequately protect [KIUC's] Transmission and/or Distribution System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Attachments to this Agreement.

Amended Application, Attachment 2, at 2.

judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region. Amended Application, Attachment 2, at Attachment 1.

C.

KIUC's Position

In support of its Application, KIUC stated:

1. With respect to the PPC and Interconnection Agreement, the Contracting Parties agreed to energy charges for the delivery of energy for sale to KIUC calculated at an agreed upon rate.²⁸ Such agreements have been approved by the commission in other proceedings. KIUC contended that the terms of the PPC were just and reasonable, and consistent with HRS § 269-27.2 and the applicable provisions of HAR Chapter 6-74.²⁹

KIUC also noted that the specific terms and conditions of the PPC and Interconnection Agreement "were negotiated by the [Contracting] Parties at arms-length and contain indemnification, insurance and other provisions which will serve to protect KIUC and its members from certain risks associated with interconnecting with the Facility. Moreover, [KIUC states] that the terms and conditions of the PPC and the Interconnection Agreement will not affect KIUC's ability to provide electric service to its members and is not discriminatory to other small power producers. For these reasons, KIUC requests [c]ommission approval of the PPC and the related Interconnection Agreement[.]"³⁰

Finally, KIUC requested that the commission find that the purchased energy charges to be paid by KIUC were reasonable

²⁸Application, at 9.

²⁹Application, at 9.

³⁰Application, at 9-10.

and that the purchased power arrangements, pursuant to which KIUC would purchase energy from Green Energy, were prudent and in the public interest.³¹

2. With respect to including the purchased energy charges and related revenue taxes that are incurred under the PPC with Green Energy in KIUC's ERAC, KIUC argued:

KIUC presently implements a fuel adjustment clause (aka, ERAC) through its applicable rate schedules set forth in Tariff No. 1 to recover fuel and purchased energy costs previously approved by the [c]ommission.

Application, at 10.

3. With respect to the IRP process, the deadline for KIUC to file its third Integrated Resource Plan ("3rd IRP") was December 20, 2007, (extended to December 20, 2008 by Order No. 23944, filed on December 28, 2007 in Docket No. 2006-0165). KIUC filed its IRP on December 18, 2008. KIUC states:

KIUC's predecessor submitted its 2nd IRP in Docket No. 96-0266 and KIUC's 3rd IRP is currently under development and scheduled to be submitted to the [c]ommission for its review and approval in Docket No. 2006-0165 on or about June 20, 2007. Neither the 2nd IRP nor 3rd IRP specifically addresses the purchased power pursuant to the PPC with Green Energy primarily due to its small size (e.g., 150 kW). Although renewable energy projects of this size may be reviewed to retain the integrity of KIUC's IRP process, it will not likely be considered as part of KIUC's next IRP cycle in Docket No. 2006-0165 as these projects are simply too small and spontaneous to align with KIUC's IRP activities and model effectively. Notwithstanding these impracticalities in considering these small projects, KIUC contends that the PPC with Green Energy was executed to be consistent with [Public Utility Regulatory Policies Act of 1978 and the State's Renewable Portfolio Standard[s ("RPS")], as set forth in HRS § 269-91 et seq. Thus, for

³¹Application, at 10.

these reasons, KIUC also requests a waiver of Paragraph III.D.5 of the IRP Framework, to the extent necessary and applicable.

Application, at 11-12 (footnote and text therein omitted).

D.

Consumer Advocate's Position

On October 11, 2007, in response to the Application, the Consumer Advocate filed its Statement of Position and a letter submitting under seal additional confidential pages to its Statement of Position (collectively, "Statement of Position").

The Consumer Advocate concluded:

- Green Energy's Facility meets the criteria of a small power production facility under [HAR § 6-74-4(a)].
- The terms of the [Original] PPC between KIUC and Green Energy are reasonable and in the public interest.
- The terms of the Interconnection Agreement executed between KIUC and Green Energy are reasonable.
- The inclusion of [the Original] PPC energy costs in KIUC's ERAC is reasonable.
- The [c]ommission should waive the requirements of Paragraph III.D.5. of the IRP Framework.

Statement of Position, at 14-15.

On October 23, 2008, in response to the Amended Application, the Consumer Advocate states, "with the exception of the pricing provision included in the Revised PPC, the changes included in the Revised PPC are non-substantive in nature and

provide clarification of and consistency within the [Revised PPC]."³² The Consumer Advocate concludes:

[T]he basis for determining the energy rate set forth in the Revised PPC is reasonable and in the public interest because:

- The purchase price identified in the Revised PPC (i.e. \$200 per MWh (\$0.20 per kWh)) is already below KIUC's Schedule "Q" Payment Rate for September 2008 (i.e., \$245 per MWh (\$0.2450 per kWh)).
- Future adjustments to the contractual energy rate shall be made according to percentage changes in the Honolulu CPI. As noted by KIUC in its Amended Application, this methodology of energy price adjustment is expressly sanctioned by [HRS] § 269-27.2(c).
- The Revised PPC provides that energy payments shall be capped at the Schedule "Q" Rate if the contractually mandated energy rate adjustment exceeds the Schedule "Q" Rate on file with the [c]ommission. This provision ensures that KIUC is purchasing electricity at a rate that does not substantially exceed KIUC's own cost to produce the same amount of electricity for [KIUC's] customers.
- Recently, it has been observed that the price of fossil fuel has increased sharply over the past few years. Because the Honolulu CPI will probably increase gradually over the course of the Revised PPC as compared to the price of fossil fuel over the same time span, the price for electricity produced pursuant to the Revised PPC should be lower than if KIUC relied upon its Schedule "Q" Payment Rate due to the fact that KIUC's Schedule "Q" Payment Rate is based, in large part, upon the cost of fossil fuel purchased by [KIUC] for [KIUC's] generating units.

Supplemental Statement of Position, at 5-6. The Consumer Advocate "points out that the Revised PPC is substantially similar to the

³²Division of Consumer Advocacy's Supplemental Statement of Position, filed on October 23, 2008 ("Supplemental Statement of Position"), at 3.

PPC submitted by KIUC with the Application filed on March 6, 2007. Accordingly, the Consumer Advocate believes that the analysis, recommendations, and conclusions made by the Consumer Advocate in its [Statement of Position] filed on October 11, 2007 are still valid because, except for the changes made to the [Revised] PPC's pricing term, the provisions of the original PPC remain unchanged in terms of substance."³³

II.

Discussion

In general, HRS § 269-27.2(c) and HAR chapter 6-74, subchapter 3, guide the commission's review of the rates agreed upon between KIUC and Green Energy.

HRS § 269-27.2(c) states in relevant part that "[t]he rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission[.]"

HAR § 6-74-22 provides that the rates for purchase shall:

1. Be just and reasonable to the electric consumers of the electric utility and in the public interest;
2. Not discriminate against qualifying cogeneration and small power production facilities; and

. . . .

³³Supplemental Statement of Position, at 7-8 (footnote omitted).

Notwithstanding HAR § 6-74-22, subchapter 3 does not prohibit an electric utility or any qualifying facility from agreeing to a rate for purchase, or terms or conditions relating to any purchase, which differ from the rates, terms, or conditions that would otherwise be required by subchapter 3.³⁴

HAR § 6-60-6(2) states that "[n]o changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission." Thus, the commission must approve the Revised PPC or the rates for purchase under the revised PPC, to allow KIUC to include the costs of purchased energy under its Revised PPC in its ERAC.

The commission, upon its review of the docket record, makes the following findings and conclusions:

1. The Revised PPC and rates appear consistent with the applicable provisions of HAR chapter 6-74, particularly sections -21 through -24 and HRS § 269-27.2. Significantly, the rates are de-linked from the price of fossil fuel and capped at or below the Schedule "Q" Rate for the utility.

2. The Revised PPC is for as-available energy subject to certain amounts of energy purchased by KIUC, and certain production level amounts by Green Energy. On balance, the requirements are designed to provide Green Energy with a certain level of income stream for the purpose of reasonably meeting its debt service obligations, while the minimum annual production

³⁴HAR § 6-74-15(b)(1).

level requirements ensure KIUC of receiving a consistent amount of as-available energy during the term of the Revised PPC.

3. Based on findings 1 and 2, above, the energy payment rates set forth in the Revised PPC are reasonable and consistent with HRS § 269-27.2(c) and HAR §§ 6-74-15(b)(1) and 6-74-22, as applicable.

4. The terms and conditions of the Revised PPC, as a whole, are reasonable and consistent with the public interest and the State's overall energy policy of reducing the State's dependence on fossil fuel. Thus, the purchased power arrangements described in the Revised PPC, pursuant to which KIUC will purchase energy from Green Energy, appear prudent and in the public interest.

5. KIUC is authorized to include the purchase energy costs and related revenue taxes it incurs under the Revised PPC in KIUC's ERAC for the term of the Revised PPC, consistent with HAR § 6-60-6(2).

6. The Interconnection Agreement: (A) sets forth the terms and conditions for the delivery of Green Energy's as-available energy from the Facility to KIUC's transmission system, consistent with the Revised PPC; and (B) provides KIUC's system and equipment with the appropriate protection and safeguards related to the interconnection of Green Energy's Facility. The terms and conditions of the Interconnection Agreement, as a whole, are reasonable.

7. To the extent applicable, waiver of Paragraph III.D.5 of the IRP Framework is reasonable due to the time

elapsed since filing of KIUC's second IRP and considering the relatively small size of Green Energy's Facility.

III.

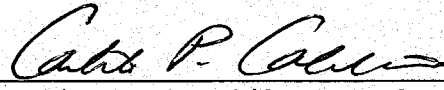
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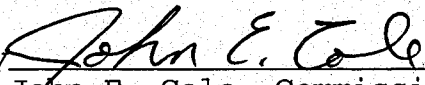
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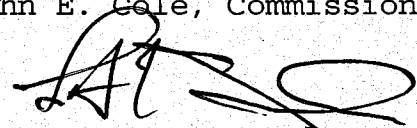
1. The Revised PPC between KIUC and Green Energy, dated August 27, 2008, is approved.
2. KIUC may include, in its ERAC, the purchased energy charges (and related revenue taxes) that KIUC incurs under the Revised PPC, to the extent that such payments are not recovered in its base rates.
3. The Interconnection Agreement between KIUC and Green Energy, dated December 18, 2006, is approved.
4. This docket is closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii JAN - 6 2009.

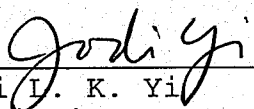
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2007-0059.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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